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IN THE

Supreme Court of the United States

October Term 1940

No. 66

WILLIAM B. MILLIKEN, MARGARET M. MILLIKEN, TEXAS PRODUCTION COMPANY, a Corporation, and THE OHIO OIL COMPANY, a Corporation,

PETITIONERS,

vs.

VIOLET L. MEYER, Both Individually and as Administratrix with the Will Annexed of the Estate of Raymond D. Meyer, Deceased, RESPONDENT.

PETITION FOR RE-HEARING.

Mr. Justice Douglas delivered the opinion of the Court.
(December 23, 1940)

W. E. CLARK,
FRED S. CALDWELL,
Suite 402-408 Midland Savings Building, Denver, Colorado,
Counsel for Respondent.

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PETITION FOR RE-HEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

In accordance with Rule 33 of this Honorable Court, the Respondent, Violet L. Meyer, both individually and as Administratrix with the Will Annexed of the Estate of Raymond D. Meyer, deceased, respectfully presents this her petition for rehearing, and as grounds therefor says:

THE FOLLOWING STATEMENT APPEARING IN LINES 3, 4 AND 5 FROM THE TOP OF PAGE 2 OF THE OPINION: "MEYER WHO WAS ASSERTED TO BE A RESIDENT OF WYOMING, WAS PERSONALLY SERVED WITH PROCESS IN COLORADO PURSUANT TO THE WYOMING STATUTE;[3]" AND THE FURTHER STATE-

MENT APPEARING IN LINES 6, 7 AND 8 FROM THE TOP OF PAGE 5 OF THE OPINION: "WHILE OUTSIDE THE STATE, HE (MEYER) WAS PERSONALLY SERVED IN ACCORDANCE WITH THE STATUTORY SCHEME WHICH WYOMING HAS PROVIDED FOR SUCH OCCASIONS"; AND THE LAST SENTENCE OF THE OPINION: "HERE SUCH A REASONABLE METHOD WAS SO PROVIDED AND SO EMPLOYED": ARE ERRONEOUS STATEMENTS OF THE WYOMING LAW AND STAND CONTRADICTED BY THE RECORD.

The pertinent provisions of the Wyoming statute are set forth in note 3 on page 2 of the opinion, as follows:

> "[3]Wyo. Comp. Stat. 1920, § 5636 provided: 'Service by publication may be had in either of the following cases: . . . 6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent.'"
>
> Section 5641 provided:
>
> "'Personal service out of state: In all cases where service may be made by publication under the provisions of this chapter, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons.'"

According to the plain wording of these statutory provisions the law of Wyoming is that service by publication upon a citizen of Wyoming will support a judgment in personam only upon the existence of one or more of these

grounds which are conditions precedent to such constructive service, viz.: the defendant Wyoming citizen, or legal resident, must have departed from the county of his residence in Wyoming with the intent to delay or defraud his creditors or to avoid the service of summons, or he must keep himself concealed with like intent. A mere reading of the Wyoming statute is sufficient to show that it does not make *mere absence from the state* ground for constructive service in an action in personam. And obviously any concealment by such defendant for the purpose of avoiding the service of summons must be a concealment within the State of Wyoming, because a writ of summons issued by a Wyoming court will run only within the territorial limits of the State of Wyoming. And a fortiori the only concealment the Wyoming statute could possibly contemplate would be concealment from a Wyoming process server. It therefore follows that if Meyer did not depart from the county of his residence (a purely fictitious legal residence imposed by law) in Wyoming, "with the intent to delay or defraud his creditors or to avoid the service of summons," he could not be served by publication under the Wyoming statute. And if Meyer was not subject to service by publication under the Wyoming statute, then the "personal service of a copy of the summons and the petition in said action" could not be legally made on him out of the state, because the Wyoming statute expressly limits such personal service out of the state to "cases where service may be made by publication under the provisions of this chapter."

In his petition filed in the Wyoming court on July 26, 1927, (record, folios 34-35), Milliken expressly stated and alleged the things concerning Meyer's then physical residence in Colorado and his then physical absence from the state of Wyoming, which appear *infra* in the left hand column. And eight months later, Milliken's attorney in his affidavit for constructive service by publication (record, folio 192), made the statements concerning Meyer's asbence from the State

of Wyoming, and his then post office address in Denver, Colorado which appear *infra* in the righthand column:

(Record, folios 95-97):

"That said defendant Meyer, in taking out certain permits in the name of the plaintiff covering unfavorably located lands within the Hamilton and Isles structures, showed plaintiff's address as being at 1114 Logan St., Denver, Colorado, when in truth and in fact, *said address was the residence of the said Meyer*, and was not the address of said plaintiff, and this was well known to the said defendant Meyer; all mail, therefore, addressed to the plaintiff by the United States Land Office touching said Hamilton and Isles structures, or any of the lands contained therein, went to the defendant Meyer, and was never received by the plaintiff, and plaintiff, for many months after the transactions above set forth, understood and believed that filings had been made and permits issued in keeping with the understanding had between himself, the defendant Meyer and the said Hagen."

(Record, folio 193):

"*That since the filing of this action said defendant has remained out of the State of Wyoming* and has concealed himself, and now conceals himself to avoid the service of the summons issued out of the above named court in this cause, and since the filing of this suit, said defendant has and he does now so conceal himself that such process cannot be served upon him.

"That this action is brought for an accounting between co-joint-adventurers and to cancel and set aside a contract entered into between the plaintiff and the defendant, Transcontinental Oil Company, arising out of a joint adventure enterprise, and which said contract plaintiff was induced to enter into through the fraud of the defendants, Transcontinental Oil Company and R. D. Meyer, as co-joint-adventurers;

"That this action is one of those mentioned in Section 5636, Wyoming Compiled Statutes, 1920;

"That the present post office address of said defendant, R. D. Meyer, is Denver, Colorado.

C. R. ELLERY

"Subscribed and sworn to before me this 26th day of March, 1928.

M. Cryderman,
Notary Public."

We concede that as stated in the opinion:

"'Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable' from the various incidences of state citizenship. See Lawrance v. State Tax Commission, 286 U. S. 276, 279; New York ex rel. Cohn v. Graves, 300 U. S. 308. The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incidence of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him. See Restatement, Conflict of Laws, §§ 47, 79; Dodd, Jurisdiction in Personal Actions, 23 Ill. L. Rev. 427."

But the State of Wyoming has seen fit to so word and draft its law governing service by publication in actions against its citizens who may be beyond its territorial limits, that its courts cannot obtain jurisdiction of their persons, either by publication or by personal service of summons outside

the state except: "in actions where the defendant * * * has departed from the county of his residence *with the intent to delay or defraud his creditors, or to avoid the service of summons, or keeps himself concealed with like intent.*" In other words, *something more than mere absence from the state* is required by the Wyoming statute before an action in personam can be maintained against one of its absent citizens upon service by publication or personal service of summons outside the state. And in the instant case, it affirmatively appears upon the face of the record that Meyer, long prior to the commencement of Milliken's action, had established and continuously maintained his home, his place of abode, the place where he and his family lived, his actual physical residence, at No. 1114 Logan Street, Denver, Colorado. And at the time Milliken's action was commenced, Meyer did not have, and for years prior thereto he had not had or maintained a home, living quarters or a place of abode within the State of Wyoming. Obviously, therefore, Meyer although by legal fiction he continued to be a citizen and legal resident of Wyoming, had not departed from the county of his residence in Wyoming *"with the intent to delay or defraud his creditors, or to avoid the service of summons."* Therefore, conceding that the State of Wyoming might enact a law that would support a judgment in personam against one of its absent citizens upon personal service made out of the state, *merely upon the ground of such absence*, the fact is, *Wyoming has not as yet seen fit to enact such a law.*

It is true in the instant case, that Meyer was a citizen and, by fiction of law, a legal resident of Wyoming at the time Milliken brought his action in the Wyoming court. It is also true that Meyer was then absent from the State of Wyoming. And if this court can so read and construe the Wyoming statute as to authorize a judgment in personam against Meyer by the Wyoming court upon personal service of summons made upon him in Colorado, *merely upon the ground that he was absent from Wyoming*, then the opinion as an-

nounced should stand. Otherwise this petition for re-hearing should be granted.

Respectfully submitted,

W. E. CLARK,
FRED S. CALDWELL,
Counsel for Respondent.

CERTIFICATE OF COUNSEL.

I, FRED S. CALDWELL, as one of counsel and attorney of record for the Respondent herein, do hereby certify that the within and foregoing petition for rehearing, which was prepared by me personally, is presented in good faith and not for delay.

Fred S. Caldwell.

FRED S. CALDWELL,
Counsel for Respondent.

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SUPREME COURT OF THE UNITED STATES.

No. 66.—October Term, 1940.

William B. Milliken, Margaret M. Milliken, Texas Production Company, et al., Petitioners, *vs.* Violet L. Meyer, Both Individually and as Administratrix with the Will Annexed of the Estate of Raymond D. Meyer, Deceased.	On Writ of Certiorari to the Supreme Court of the State of Colorado.

[December 23, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

The Colorado Supreme Court held null and void a judgment of the Wyoming court against the claim of Milliken that that judgment was entitled to full faith and credit under the federal constitution. 101 Colo. 564; 105 Colo. 532. The case is here on a petition for certiorari which we granted because of the substantial character of the federal question which is raised.

The controversy is over a 1/64th interest in profits from operation of certain Colorado oil properties. Transcontinental[1] on August 31, 1922, contracted to pay Meyer 4/64ths of those profits. Milliken asserted a claim to a two-thirds interest in that 4/64ths share. As a settlement of that dispute Transcontinental on May 3, 1924, contracted to pay Milliken a 2/64ths interest and Milliken assigned[2] to Transcontinental all his claims against Meyer pertaining to the lands in question and to Meyer's 4/64ths interest in the profits.

Later Milliken instituted suit in the Wyoming court alleging a joint adventure with Transcontinental and Meyer and charging a

[1] Transcontinental Oil Co. In June, 1923, Transcontinental had disposed of a one-half interest in the properties in question to Texas Production Co. In April, 1931, Ohio Oil Co. acquired the remaining interest of Transcontinental in the properties.

[2] Milliken's son, Carl S. Milliken, had an interest in the Milliken claim which he likewise assigned to Transcontinental.

conspiracy on their part to defraud him of his rights. He sought a cancellation of the contracts of May 3, 1924, and an accounting from Transcontinental and Meyer. Meyer, who was asserted to be a resident of Wyoming, was personally served with process in Colorado pursuant to the Wyoming statutes;[3] but he made no appearance in the Wyoming cause.[4] Transcontinental appeared and answered. The court found that there was no joint venture between Milliken and Transcontinental; that the contracts of May 3, 1924, were valid; and that the action against Transcontinental should be dismissed with prejudice. It found, however, that there was a joint venture between Milliken and Meyer; that they were entitled to share equally in 6/64ths of the net profits; and that, while Meyer had regularly received 4/64ths, he had refused to account to Milliken for his 1/64th part. The court did not purport to decree the 1/64th interest to Milliken or anyone else but entered an *in personam* judgment against Meyer for the profits which Meyer had withheld from Milliken, together with interest thereon; and enjoined Transcontinental from paying, and Meyer from receiving, more than 3/64ths of the net profits. This was on July 11, 1931. Thereafter the 1/64th share was withheld from Meyer and paid over to Milliken.[5] In 1935 respondent instituted this suit[6] in the Colorado court pray-

[3] Wyo. Comp. Stat. 1920, § 5636 provided: "Service by publication may be had in either of the following cases: . . . 6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent."

Sec. 5641 provided:

"Personal service out of state. In all cases where service may be made by publication under the provisions of this chapter, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons."

[4] His deposition, however, was taken on oral interrogatories concerning his legal residence in Wyoming.

[5] By the Ohio Oil Co. one of the vendees of Transcontinental. These payments were to Margaret M. Milliken to whom Milliken's interests had been assigned.

[6] Texas Production Co. and Ohio Oil Co. were joined as defendants. They filed separate answers and cross-complaints which are not material here. It should be noted, however, that the Ohio Oil Co. in its answer set up the contract between Milliken and Transcontinental whereby Milliken assigned all of his rights against Meyer in the lands and the 4/64ths interest in question to Transcontinental and alleged that Milliken was estopped thereby to make any claims against it for the disputed 1/64th interest.

ing, *inter alia,* for a judgment against Milliken for the sums withheld under the Wyoming judgment and paid to Milliken, for an injunction against Milliken attempting to enforce the Wyoming judgment, and for a decree that the Wyoming judgment was a nullity for want of jurisdiction over Meyer or his property. The bill alleged, *inter alia,* that Meyer at the time of service in the Wyoming court had long ceased to be a resident of Wyoming and was a resident of Colorado; that the service obtained on him did not give the Wyoming court jurisdiction of his person or property; and that such judgment was violative of the due process clause of the Fourteenth Amendment. Milliken's answer alleged, *inter alia,* that Meyer was a resident of Wyoming at the time of the Wyoming action and that the Wyoming judgment was entitled to full faith and credit in Colorado under the federal constitution. The Colorado court, on issues joined, found that Meyer was domiciled in Wyoming when the Wyoming suit was commenced, that the Wyoming statutes for substituted service were constitutional, that the affidavit for constructive service[7] on Meyer was filed in good faith, substantially conformed to the Wyoming statute and stated the truth, that Wyoming had jurisdiction over the person of Meyer, that the Wyoming decree[8] was not void, and that the bill should be dismissed.

That judgment was reversed by the Supreme Court of Colorado. It did not pass on the question of whether or not the Wyoming court had jurisdiction of the parties and subject matter. It held that the Wyoming decree was void on its face because of an irreconcilable contradiction between the findings and the decree. In its view the finding of the Wyoming court that Milliken's assignment of May 3, 1924, to Transcontinental of his claims against Meyer was valid, deprived the court of any ground upon which it could predicate a judgment against Meyer, since the only basis for an action by Milliken against Meyer rested upon the claim before its assignment.

[7] While the affidavit for constructive service stated in accordance with § 5636 of the Wyoming Comp. Stat., *supra,* note 3, that Meyer concealed himself in order to avoid service of summons, the present record does not show whether or not the Wyoming court so found.

[8] The Wyoming judgment does not seem to have been proved by respondents in accordance with the provisions of R. S. § 905, 28 U. S. C. § 687 in their suit in Colorado to set it aside. Nor was that judgment so proved by the answers. But since the Colorado trial court gave the Wyoming judgment full faith and credit despite lack of such proof, respondents cannot here claim that that was error.

Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry. *Grover & Baker Sewing Machine Co.* v. *Radcliffe,* 137 U. S. 287; *Adam* v. *Saenger,* 303 U. S. 59. But if the judgment on its face appears to be a "record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself." *Adam* v. *Saenger, supra,* at p. 62. In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. *Fauntleroy* v. *Lum,* 210 U. S. 230; *Roche* v. *McDonald,* 275 U. S. 449; *Titus* v. *Wallick,* 306 U. S. 282. Whatever mistakes of law may underlie the judgment (*Cooper* v. *Reynolds,* 10 Wall. 308) it is "conclusive as to all the *media concludendi*". *Fauntleroy* v. *Lum, supra,* at p. 237.

Accordingly, if the Wyoming court had jurisdiction over Meyer, the holding by the Colorado Supreme Court that the Wyoming judgment was void because of an inconsistency between the findings and the decree was not warranted.

On the findings of the Colorado trial court, not impaired by the Colorado Supreme Court, it is clear that Wyoming had jurisdiction over Meyer in the 1931 suit. Domicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service. Substituted service in such cases has been quite uniformly upheld where the absent defendant was served at his usual place of abode in the state (*Huntley* v. *Baker,* 33 Hun. 578; *Hurlbut* v. *Thomas,* 55 Conn. 181; *Harryman* v. *Roberts,* 52 Md. 64) as well as where he was personally served without the state. *In re Hendrickson,* 40 S. D. 211. That such substituted service may be wholly adequate to meet the requirements of due process was recognized by this Court in *McDonald* v. *Mabee,* 243 U. S. 90, despite earlier intimations to the contrary. See *Pennoyer* v. *Neff,* 95 U. S. 714, 733; Burdick, Service as a Requirement of Due Process in Actions In Personam, 20 Mich. L. Rev. 422. Its adequacy so far as due process is concerned is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably

calculated to give him actual notice of the proceedings and an opportunity to be heard. If it is, the traditional notions of fair play and substantial justice (*McDonald* v. *Mabee, supra*) implicit in due process are satisfied. Here there can be no question on that score. Meyer did not merely receive actual notice of the Wyoming proceedings. While outside the state, he was personally served in accordance with a statutory scheme which Wyoming had provided for such occasions. And in our view the machinery employed met all the requirements of due process. Certainly then Meyer's domicile in Wyoming was a sufficient basis for that extraterritorial service. As in case of the authority of the United States over its absent citizens (*Blackmer* v. *United States*, 284 U. S. 421), the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. "Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable" from the various incidences of state citizenship. See *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 279; *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308. The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incidence of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him. See Restatement, Conflict of Laws, §§ 47, 79; Dodd, Jurisdiction in Personal Actions, 23 Ill. L. Rev. 427. Here such a reasonable method was so provided and so employed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.